

Internal Revenue Service

Department of the Treasury
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LEGEND:

Taxpayers =
Date 1 =
Date 2 =
State 1 =
State 2 =
Year 1 =
Year 2 =
Year 3 =

Dear :

This letter responds to a letter dated , from Taxpayers' representative requesting permission, pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for an extension of time to make an election under § 263(c) of the Internal Revenue Code for the taxable year ending Date 1.

According to the information submitted, Taxpayers live in State 1, are married to each other, and file a joint tax return. On Date 2, Taxpayers invested in a joint venture engaged in oil and gas operations in State 2. As a result, Taxpayers first incurred intangible drilling and development costs (IDCs) in Year 1, and continued to incur IDCs in Year 2.

Taxpayers hired an independent tax preparer to file its Year 1 tax return. Unfortunately, the tax preparer did not have experience or knowledge with respect to oil and gas operations and the taxation thereof. As a result, the tax preparer was unaware of the option to elect to currently expense IDCs on Taxpayers' income tax return for the first tax year that IDCs are incurred and did not inform Taxpayers of this option. Consequently, Taxpayers did not make a timely election to currently expense IDCs on Taxpayers' Year 1 tax return.

In Year 3, Taxpayers engaged different accountants to perform a review of the tax accounting for its oil and gas interests. During that review, the accountants discovered that Taxpayers had not elected to currently expense IDCs related to oil and gas operations in Year 1. The accounting firm advised Taxpayers to submit a request for relief under § 301.9100-1 for an extension of time to make the election under § 263(c). This request is being made pursuant to such advice.

Taxpayers represent that had it been aware of the ability to currently deduct IDCs, and the need to make an election to deduct such costs on the return for the first taxable year in which it incurred these costs, Taxpayers would have timely made this election on the Year 1 tax return.

Taxpayers represent that granting the relief requested will not result in Taxpayers having a lower tax liability in the aggregate for the tax years affected by the election than Taxpayers would have had if the election had been timely made (taking into account the time value of money). Taxpayers represent that it acted in good faith and that granting relief will not result in prejudice to the interests of the Government.

Law and Analysis

Section 263(c) allows a taxpayer an election, under regulations prescribed by the Secretary, to deduct IDCs. The regulations appear under § 1.612-4. Under § 1.612-4(d), the taxpayer may exercise the election by claiming IDCs as a deduction on the taxpayer's return for the first taxable year in which the taxpayer pays or incurs such costs. No formal statement is necessary.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a).

The Commissioner will grant requests for relief under § 301.9100-3 when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Section 301.9100-3(a). Section 301.9100-3(b) provides, in part, that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief under § 301.9100-3 before the failure to make the regulatory election is discovered by the

Internal Revenue Service, and the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election. Section 301.9100-3(c) provides, in part, that the Government's interest is considered prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate of all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 through 301.9100-3 have been satisfied. Accordingly, the Commissioner grants Taxpayers an extension of time of 120 days from the date of this letter to make the election under § 263(c) on an amended Year 1 tax return with the appropriate service center. A copy of this letter should be attached to the amended return. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by Taxpayers and Taxpayers' representative and accompanied by a penalty of perjury statements executed by the appropriate parties. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code and the regulations thereunder. Specifically, we express no opinion concerning whether Taxpayer satisfies the requirements of § 263(c) and § 1.612-4.

This letter ruling is directed only to the taxpayer who requested it. Under § 6110(k)(3), a letter ruling may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this ruling letter to your authorized representatives. We also are sending a copy of this letter to the appropriate Industry Director, LB&I.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Jaime C. Park
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):
copy of this letter
copy for section 6110 purposes